

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 853 of 1997

in

SPECIAL CIVIL APPLICATION No. 10847 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 : YES // 2 to 5 : NO

INDO NATIONAL LIMITED

Versus

DILAWAR ISMAIL LALIWALA

Appearance:

MR BR GUPTA for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 05/08/97

ORAL JUDGEMENT {Per : Thakkar, J.}

This appeal is filed against an interim order passed by the learned Single Judge in Special Civil Application No. 10847 of 1996 on July 29, 1997.

2. The appellant is the petitioner before the learned Single Judge. Petition is admitted and final hearing is fixed on August 7, 1997. In the meanwhile, however, the learned Single Judge directed the present appellant to reinstate the respondent workman.

3. Mr. Gupta, learned counsel for the appellant vehemently urged that when 'Rule' is issued and the matter is fixed for final hearing day after tomorrow i.e. on 7th August, 1997, the learned Single Judge ought not to have passed mandatory order directing reinstatement of the employee. He submitted that prima facie the Court was satisfied and hence 'Rule' was issued and the matter is fixed for final hearing immediately. He stated that record and proceedings have been called for from the Tribunal as a contention is raised by the appellant that he was not served with a notice issued by the Tribunal in an application for setting aside ex-parte award.

4. Now, looking to the record, it clearly appears that ex-parte award of reinstatement and payment of back wages was made by the Tribunal on July 30, 1994. It is, no doubt, true that according to the appellant, he was not aware of the proceedings pending before the Tribunal. As soon as the appellant came to know about ex-parte award, he filed an application to set aside that award. The said application came to be rejected. Various points were raised with regard to final disposal of that application but we are not entering into that aspect in view of the fact that matter is pending before the learned Single Judge. But in order dated October 18, 1995, it was stated that application for setting aside ex-parte award deserves to be rejected on the ground that in spite of notice to the appellant, he did not remain present. Mr. Gupta stated that the statement is not factually correct and that the appellant was never issued any notice and he was not aware of such an order being passed. It was further stated that the appellant came to know about rejection of application only on December 19, 1996. Immediately thereafter, an application was made, copy was obtained and the petition was filed on December 30, 1996. In these circumstances, the learned Single Judge ought not to have passed an order directing reinstatement of the workman.

Now, ordinarily, we would have considered the argument as to whether a mandatory direction should have

been issued at interim stage when final hearing is fixed in near future but in view of peculiar facts and circumstances, we are not interfering with that direction. Looking to Affidavit-in-Reply filed on behalf of the workman in July, 1997, in para-8 it is clearly stated that after the order rejecting an application for setting aside ex-parte award was passed by the Tribunal on October 18, 1993 the respondent workman asked the appellant to comply with the order. It was stated ;

"I the respondent-workman gave the notice by registered a.d. to the petitioner on 27-2-96, 21-6-96 and September, 1996, which are received by the petitioner, inter alia requesting the petitioner to comply with the order in pursuance of the order passed by the Labour court on 18-10-96 in misc. application No. 187/94. I, therefore, say that the petitioner was aware of the order passed by the Labour Court and I deny that the petitioner came to know about the said order only on receipt of the notice from the registry of the Labour Court. Annexed hereto and marked Annexure "I" is the copy of the notice."

There is no counter to the said Affidavit-in Reply. Notices and even the acknowledgment receipts are also annexed alongwith the Affidavit-in-Reply.

From the above facts, it is clear that after the application was rejected for setting aside ex-parte award, the workman drew attention of the appellant and also demanded his reinstatement. In spite of such demand, if reinstatement was not made and the learned Single Judge passed the Order, in our opinion, it cannot be said that the order requires any interference. Hence, Letters Patent Appeal deserves to be dismissed.

We may, at this stage, mention that we have not entered into merits of the case, and interim order of reinstatement which we are confirming will also be subject to the final out come of the petition. Letters Patent Appeal accordingly stands dismissed. No order as to costs.

At this stage, the learned counsel for applicant appellant prays that some time may be granted so that the order may be complied with. In our opinion, no time can be granted in view of the circumstances mentioned hereinabove. Hence, the prayer is rejected.

Prakash*